



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

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| Date: | 05/31/12 | Bill No: | Assembly Bill 2679 |
| Tax Program: | Sales Diesel Fuel | Author: | Transportation Committee |
| Sponsor: | BOE | Code Sections: | RTC 6480.1 & 60116 |
| Related Bills: | | Effective Date: | 01/01/13 |

This analysis will only address the bill's provisions which impact the State Board of Equalization (BOE)

BILL SUMMARY

This bill contains **BOE-sponsored** provisions that make technical and administrative changes related to the fuel tax swap legislation. Both the sales tax prepayment rates and the Interstate User rate for diesel fuel have adjustment dates that would be changed to coincide with the date the BOE is required to annually adjust the diesel and motor vehicle fuel (gasoline) excise tax rates, as specified in the fuel tax swap bills:

- Amend Revenue and Taxation Code (RTC) Section 6480.1 to align the dates for setting the sales tax prepayment rates on the gasoline, aircraft jet fuel, and diesel fuel with the date of the excise tax rate adjustments for both gasoline and diesel fuel as required by the fuel tax swap, and allow the BOE to notify fuel vendors of a new prepayment rate by means other than "mail."
- Amend Section 60116 to align the date the BOE sets the Interstate User rate for diesel fuel with the date of the excise tax rate adjustment for diesel fuel, as required by the fuel tax swap.

Summary of Amendments

The amendments since the previous analysis affect provisions unrelated to the BOE.

**Align the date for sales tax prepayment rate setting with the date for
excise tax rate adjustment, as required by the fuel tax swap**
Revenue and Taxation Code Section 6480.1

ANALYSIS

CURRENT LAW

Under existing law, Section 6480.1 of the Sales and Use Tax Law provides that a supplier of gasoline, diesel fuel, or aircraft jet fuel is required to collect a prepayment of retail sales tax from the person to whom the gasoline, aircraft jet fuel, or diesel fuel is sold or distributed. The BOE is required to determine and set the rates for prepayment of the sales tax by November 1 of the year prior to the effective date of the rates and mail notification to every supplier, wholesaler, and retailer of gasoline, diesel fuel, and aircraft jet fuel by January 1. The adjusted prepayment rates are generally effective from April 1 through March 31 of the following year.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position

In late March 2010, two “fuel tax swap” measures were enacted (ABx8 6, Ch. 11, and SB 70, Ch. 9) that made several changes to the imposition and rates of state taxes on transactions involving transfers of motor vehicle fuel and diesel fuel. Minor revisions were made to the fuel tax swap provisions with the passage of AB 105 (Ch. 6, Stats. 2011). This fuel tax swap is intended to be revenue neutral, so that the state’s tax revenues would not be increased or decreased, nor would taxpayers’ share of the tax burden be affected. To maintain revenue neutrality, these “swap” provisions require the BOE, beginning on July 1, 2011, for gasoline, and July 1, 2012, for diesel fuel, to adjust the excise tax rates – either upwards or downwards - so that the total revenues derived from the imposition of state excise tax and sales or use tax on sales of motor vehicle fuel and diesel fuel remain the same. The BOE is required to determine the adjusted excise tax rates by March 1 of the fiscal year immediately preceding the applicable fiscal year.

PROPOSED LAW

This bill would amend RTC Section 6480.1 to change the prepaid sales tax rate-setting date from November 1 to March 1, and change the effective date of the new rate from April 1 to July 1. The amendments would also allow the BOE to notify fuel vendors of a new prepayment rate by means other than "mail" and would make a clarifying reference to the additional sales tax on diesel fuel that took effect July 1, 2011.

BACKGROUND

The prepayment of retail sales tax on gasoline was added by the passage of Senate Bill 1610 (Ch. 214, Stats. 1986) and on diesel fuel by SB 1302 (Ch. 865, Stats. 1999). Prior to the passage of these bills, sales tax on gasoline and diesel fuel was only collected on the final retail sale. Before the requirement for prepayment of retail sales tax on these fuels, tax evasion by service station operators was a problem. Due to the number of retail service stations in the state, and the nature of operations, many service stations would either fail to obtain the necessary seller’s permit, or they would obtain the permit but fail to report the entire tax liability from their retail sales. By requiring the prepayment of the retail sales tax on the fuel, 80 percent of the retail sales tax is collected in advance. Since the retailer is required to prepay a large portion of its sales tax liability, each retailer has an incentive to report the correct sales amount and recoup the tax already paid to its supplier. Also, the BOE collects information on how many gallons of fuel are sold to each vendor, including retailers. BOE staff uses this information to trace the flow of fuel from seller to seller and ultimately reconcile those numbers with the final retail sale.

Align the date BOE sets the diesel fuel Interstate User rate with the date for excise tax rate adjustment, as required by the fuel tax swap
Revenue and Taxation Code Section 60116

ANALYSIS

CURRENT LAW

Section 60115 of the Diesel Fuel Tax Law requires interstate users of diesel fuel in a qualified motor vehicle to pay a tax that is comprised of the existing excise tax imposed by Section 60050 and the tax prescribed by Section 60116, known as the component b rate. The component b rate is established by determining the average retail price of diesel fuel for a twelve month period, removing the state excise tax and the average overall sales or use tax included in that amount, and then multiplying the remainder by the current state and local sales and use tax rate. The interstate user tax rate is the total of the excise tax rate and the component b rate and is meant to be equivalent to the state's excise tax and sales or use tax on a gallon of diesel fuel purchased in this state. Interstate users report the interstate user tax rate on their net taxable gallons of diesel fuel consumed in California.

The component b rate is set once each year by October 1 and is effective on January 1 of the succeeding year.

As described previously, the fuel tax swap bills affected taxes on diesel fuel in the following ways:

- Beginning July 1, 2011, by increasing the sales and use tax rate by 1.87%¹ on sales of diesel fuel and exempting from the sales and use tax rate increase purchases by diesel fuel users currently exempt from the excise tax on diesel fuel, if they furnish the seller with an exemption certificate completed in accordance with BOE guidelines. This includes train operators, exempt bus operators, and other users who may file claims for refund of diesel fuel tax paid on fuel used off-highway or in any other exempt manner.
- Also, beginning July 1, 2011, by decreasing the excise tax rate on diesel fuel by 5.0 cents per gallon.
- By making the BOE responsible for balancing excise tax revenue losses against sales and use tax revenue gains. For diesel fuel, the BOE will adjust the excise tax rate, up or down, so that the revenue loss from the reduced excise tax rate equals the amount of revenue gain from the sales and use tax increase of 1.87% on diesel fuel.
- By setting the date by which the excise tax rate will be adjusted as March 1, with the adjusted rate to be effective during the state's next fiscal year, beginning July 1.

PROPOSED LAW

This bill would amend RTC Section 60116 to change the date for setting the interstate user rate from October 1 to March 1 and to change the effective date of the new rate from January 1 to July 1. The amendments would also reference a new source of information to be used to compute the rate.

¹ The sales and use tax rate increase changes to 2.17% effective July 1, 2012; to 1.94% effective July 1, 2013; and to 1.75% effective July 1, 2014, and thereafter. (Legislation enacted in 2010 increased the sales and use tax rate on sales of diesel fuel by 1.75%, effective July 1, 2011, but AB 105 replaced that legislation and increased the rate further to 1.87%).

BACKGROUND

In general, interstate truckers must report all fuel used in California on either their quarterly International Fuel Tax Agreement return or their Interstate User Diesel Fuel Tax Return and pay their tax liability at that time. The interstate user diesel fuel tax is comprised of the current \$0.13 per gallon tax stated under Section 60050 (component “a”) and the rate prescribed by Section 60116 (component “b”).

The component b rate is set annually by the BOE at a cents-per-gallon rate equivalent to the statewide sales tax imposed on the retail sale of diesel fuel in this state. The component b rate is a sales tax equivalency formula which is intended to level the playing field between California truck stops and out-of-state truck stops. Prior to enactment of the component b rate, the general premise was that California’s imposition of a sales tax on diesel fuel provided an incentive for interstate truckers to “tank up” before entering California. While the interstate truckers still had to pay the excise tax, which is a per-gallon tax due on the use of diesel fuel on California highways, by purchasing their diesel fuel before entering California they were able to avoid the sales tax imposed on the retail purchase of diesel fuel in this state. The inclusion of the component b rate along with the excise tax rate that make up the interstate user diesel fuel tax was intended to impose a per-gallon surcharge, equivalent to the sales tax, which interstate truckers would only have to pay on diesel fuel purchased outside California.

AB 105, among other things, amended RTC Section 60050 and added Sections 6051.8 and 6201.8 to the Revenue and Taxation Code, to reduce the excise tax rate to \$0.13 and increase the sales and use tax rate by 1.87 percent on diesel fuel effective July 1, 2011. Each year, on or before March 1, the BOE will adjust the excise tax rate, either up or down, to account for any increases or decreases that may have occurred in the total revenue realized from these taxes on the sale of diesel fuel in the prior year. The new excise tax rate would take effect on July 1 and be in effect for that fiscal year.

The current process of adjusting the Interstate User component b rate by October 1, to be effective on January 1, will, when combined with the “fuel tax swap” adjustment process, result in additional time and costs associated with adjusting the rates a second time and sending special notices to approximately 23,000 motor carriers who use diesel fuel in interstate operations. In addition, the motor carriers would also be affected, as they would have to account for the rate change at different times, which could result in additional costs or errors.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE and is a housekeeping measure that would simply align the adjustment dates of the gasoline and diesel fuel sales tax prepayment rates and the diesel fuel Interstate User rate with the dates of the excise tax rate adjustments for both gasoline and diesel fuel as required by the fuel tax swap.
- 2. The May 31, 2012 amendments** are unrelated to the provisions sponsored by the BOE.

- 3. This bill is about a change in dates, not rates.** The following table depicts the proposed date changes:

Summary Chart of Deadlines and Dates

| Tax | Rate Setting Date | | Effective Date of Rate Change | |
|--|-------------------|--------------|-------------------------------|--------------|
| | Current Law | Proposed Law | Current Law | Proposed Law |
| Sales Tax Prepayment | November 1st | March 1st | April 1st | July 1st |
| Interstate User component b Diesel Fuel Tax Rate | October 1st | March 1st | January 1st | July 1st |
| Fuel Tax Swap - Excise Tax | March 1st | No change | July 1st | No change |

- 4. This bill should benefit both the BOE and industry.** This bill would reduce the time and costs associated with adjusting the rates at least two different times during the year, for both the BOE and the affected industry. And because of the annual adjustment to the excise tax rate on July 1, it would be administratively expedient for the BOE, and convenient for the interstate user, to also set the component b rate at the same time. The excise tax rate combined with the component b rate comprises the interstate user tax rate.

COST ESTIMATE

This measure would result in minor cost savings to the BOE as the prepaid sales tax and interstate user rate changes would coincide with the fuel tax swap excise tax rate adjustments and the need for special notices would be reduced.

REVENUE ESTIMATE

This bill would not result in a revenue impact to the state.

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